

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ethan Waterman	Team: Squad #14	CCRB Case #: 201904365	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 05/17/2019 9:38 PM	Location of Incident: 7th Avenue and West 49th Street- R Train downtown platform	Precinct: 18	18 Mo. SOL 11/17/2020	EO SOL 7/4/2021	
Date/Time CV Reported Fri, 05/17/2019 11:57 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 05/17/2019 11:57 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Joseph Accetta	25760	963833	TB DT01

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jose Quimizchavez	01840	966790	TB DT01

Officer(s)	Allegation	Investigator Recommendation
A.POM Joseph Accetta	Abuse: Police Officer Joseph Accetta questioned § 87(2)(b)	
B.POM Joseph Accetta	Abuse: Police Officer Joseph Accetta failed to provide § 87(2)(b) with a business card.	
§ 87(4-b), § 87(2)(g)		

Case Summary

On May 17th, 2019, § 87(2)(b) called the CCRB and filed this complaint.

On May 17th, 2019 at approximately 9:38 p.m., while waiting on the platform of the downtown R train at 7th Avenue and West 49th Street in Manhattan, § 87(2)(b) was approached by Police Officer Joseph Accetta and Police Officer Jose Quimizchavez of Transit Bureau District 1. PO Accetta questioned § 87(2)(b) about evading the fare, and asked “Can you tell me why you jumped the turnstile?” (**Allegation A: Abuse of Authority**, § 87(2)(g), § 87(2)(b) denied that he jumped the turnstile and got on the train with his wife, § 87(2)(b) PO Accetta failed to provide a business card to § 87(2)(b) (**Allegation B: Abuse of Authority**, § 87(2)(g), § 87(4-b), § 87(2)(g)).

§ 87(2)(b) was not arrested or summonsed during the incident.

§ 87(2)(b) recorded video on her cell phone of the incident, which is discussed below.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Joseph Accetta questioned § 87(2)(b)

The investigation established the following facts. On May 17, 2019, at approximately 9:38 p.m., § 87(2)(b) and his wife, § 87(2)(b) were waiting for a train on the downtown platform at the West 49th Street N/Q/R station. § 87(2)(b) is a black male and was wearing a blue backpack and a mint-green shirt with stripes. PO Accetta and PO Quimizchavez approached § 87(2)(b) and § 87(2)(b) on the platform after they observed a black male with a backpack jump a turnstile for the downtown platform. PO Accetta questioned § 87(2)(b) if he had jumped the turnstile, which § 87(2)(b) denied. § 87(2)(b) and § 87(2)(b) boarded the next available train without any further police action taken.

§ 87(2)(b) (BR 01) testified that he and § 87(2)(b) stood on the subway platform for approximately 20 minutes before the PO Accetta and PO Quimizchavez approached. § 87(2)(b) testified that he had an unlimited Metrocard, that he had paid his fare, and that he had no issue with entering the turnstile. § 87(2)(b) saw PO Accetta and PO Quimizchavez walk past him and § 87(2)(b) on the platform. Five minutes later, the officers approached and PO Accetta asked § 87(2)(b) “Can you tell me why you jumped the turnstile?” § 87(2)(b) told PO Accetta that he did not jump the turnstile, but PO Accetta insisted that he watched him do so. During this time, PO Quimichavez stood approximately 10 feet away and did not engage with § 87(2)(b). § 87(2)(b) announced that he was going to board the next train and he and § 87(2)(b) Neill-§ 87(2)(b) did so without incident.

§ 87(2)(b) recorded cell phone video (BR 12, BR 13) of the incident but was otherwise unavailable to the investigation. The video, which is 10 seconds in length, depicts PO Accetta speak to § 87(2)(b) in regard to the suspected fare evasion and state “You wouldn’t have pulled out your MetroCard if it wasn’t true.”

According to the testimonies of PO Accetta and PO Quimizchavez (BR 02-03), while walking on the northbound platform, the officers observed a black male with a backpack jump a turnstile on the downtown platform, which was located on the opposite side of the subway station and visible across four sets of tracks. Upon making this observation, PO Accetta and PO Quimizchavez walked upstairs to street level and reentered the subway station on the downtown platform. The officers walked up and down the downtown platform before they saw § 87(2)(b) described as a black male with a backpack.

PO Accetta asked, in summation, if § 87(2)(b) had jumped the turnstile, which § 87(2)(b) denied. PO Accetta testified that he told § 87(2)(b) that he had no intention of writing a summons and would have provided § 87(2)(b) with entry into the subway station in lieu of fare evasion. PO Accetta testified that his interaction with § 87(2)(b) ended prior to § 87(2)(b) and

§ 87(2)(b) boarding the next available downtown train. According to their memo books, neither PO Accetta nor PO Quimizchavez could affirmatively identify § 87(2)(b) as the turnstile jumper, which PO Quimizchavez attributed to the distance between the northbound and southbound platform.

Per *People v. Debour*, 40 N.Y.2d 201 (1976) (BR 04), police officers may ask pointed accusatory questions of a civilian if they have founded suspicion that such civilian is a possible suspect of a particular crime. Per MTA Section 1050.4 (BR 05), no person may use the subway system without payment of fare.

§ 87(2)(g)

Allegation (B) Abuse of Authority: Police Officer Joseph Accetta failed to provide § 87(2)(b) with a business card.

It is undisputed that PO Accetta did not provide § 87(2)(b) with a Right to Know Act business card at the end of the interaction.

PO Accetta testified that officers are required to procure a business card only when a civilian requests one, or if an officer conducts a stop for a civilian witness to an incident.

PO Quimizchavez testified that PO Accetta did not provide a business card because § 87(2)(b) did not ask for a business card, and that PO Accetta had already provided his name and shield number.

Per *New York City Administrative Code 14-174* (BR 06), an officer shall offer a business card at the conclusion of any law enforcement activity which involves investigatory questioning, and which does not result in the issuance of a summons or the effect of an arrest.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) has been a party (BR 09).
- PO Accetta has been a member of service for two years and this is the first complaint in which he has been a subject.

Mediation, Civil and Criminal Histories

- On May 29, 2019, this case was sent to mediation and on August 20, 2019, the case was returned to investigation as the complaint was no longer suitable for mediation.

- On January 7, 2020, a Notice of Claim inquiry was sent to the New York City Office of the Comptroller and will be included in the case file upon receipt (BR 10).
 - According to the Office of Court Administration, § 87(2)(b) has no history of convictions in New York City (BR 11).
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Squad No.: _____

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date